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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,123	03/29/2002	Masataka Kadowaki	AK-379XX	9685
207	7590	12/28/2005	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP			PATEL, VINIT H	
TEN POST OFFICE SQUARE			ART UNIT	
BOSTON, MA 02109			PAPER NUMBER	

1764

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/070,123

Applicant(s)

KADOWAKI ET AL.

Examiner

Vinit H. Patel

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,4-6 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 7 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed July 7, 2005 have been fully considered but they are not persuasive. Applicant argues inter alia, that the applicant's invention is distinguished from the prior art based on the fact that amounts of Cr and Ni differ in claim 3. However as in noted in the rejection in the Office Action dated April 4, 2005, the ranges of Cr and Ni overlap with the prior art in both the Sugitani, US Patent No. 5,316,721 and Konoki et al., US Patent No. 4,444,732 references. As previously cited, an overlap of ranges is a prima facie case of obviousness. See In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976) & MPEP 2144.05.

### ***Claim Rejections - 35 USC § 103***

Claims 3, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Konoki et al., U.S. Patent No. 4,444,732.

Regarding claim 3, Konoki discloses a reactor tube for reforming hydrocarbons (part of a reformer) (abstract) having an alloy comprising 20-30% Cr, up to 10% Ni, up to 3% Si and up to 3% Nb (C4/L25-33). The example in Konoki disclosing a preferred example of alloy range overlaps the claimed range. Overlap of ranges is a prima facie case of obviousness. See In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976) & MPEP 2144.05.

Regarding claims 7 and 9, It would have been obvious to one of ordinary skill in the art at the time of the invention to compose the portion of the reformer with the high heat resistant alloy where steam and fuel come into contact as such area is subjected to

high heat and corrosive conditions that would necessitate the use of the heat resistant alloy and prevent carburization (C1/L10 of Konoki).


**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinit H. Patel whose telephone number is (571) 272-0856. The examiner can normally be reached on M-F 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
VHP

  
Glenn Caldarola  
Supervisory Patent Examiner  
Art Unit 1764